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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,763	05/20/2002	Dianne Beverley Croteau	10748-006	3008
1059	7590	08/01/2005	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/926,763

Applicant(s)

CROTEAU ET AL.

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6,8-16,18-26,39-41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8-16,18-26, 39-41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 41 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 4 of claim 41, the recitation "the weight of the user person" is grammatically vague.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, 8/1, 8/3 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334).

The primary reference shows all claimed features of the instant invention with the exception of the front-to-back extent of the second support surface being approximately equal to the front-to-back extent of the first support surface. Note Figure 13 of Yu. In Yu, note the first support surface (211), second support surface (212), angle ranging from about 10 degrees to about 30 degrees (see column 9, lines 12-13), and common edge (see Figure 13) that is "about" 12 cm radius.

The secondary reference teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16). Note Figures 2 and 3. Also note the last paragraph in column 4.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the front-to-back extent of the second support surface as approximately equal to the front-to-back extent of the first support surface in order to enhance user support and comfort.

Claims 14-16, 18, 19, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334).

The primary reference shows all claimed features of the instant invention with the exception of the front-to-back extent of the second support surface being approximately equal to the front-to-back extent of the first support surface. Note Figure 13 of Yu. In Yu, note the first support surface (211), second support surface (212), angle ranging from about 10 degrees to about 30 degrees (see column 9, lines 12-13), and common edge (see Figure 13) that is "about" 12 cm radius.

The secondary reference teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16). Note Figures 2 and 3. Also note the last paragraph in column 4.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the front-to-back extent of the second support surface as approximately equal to the front-to-back extent of the first support surface in order to enhance user support and comfort.

Claims 39-41 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334).

The primary reference shows all claimed features of the instant invention with the exception of the front-to-back extent of the second support surface being approximately

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equal to the front-to-back extent of the first support surface. Note Figure 13 of Yu. In Yu, note the frame (400), first support surface (211), second support surface (212), and common edge (see Figure 13).

The secondary reference teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16). Note Figures 2 and 3. Also note the last paragraph in column 4.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the front-to-back extent of the second support surface as approximately equal to the front-to-back extent of the first support surface in order to enhance user support and comfort.

Claims 13/1 and 13/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334), as applied to claims 1-3 above, and further in view of Congleton (4552404).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Yu, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claims 26/14 and 26/16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Maier (4951334), as applied to claims 14-16 above, and further in view of Congleton (4552404).

The primary reference, as modified above, shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Yu, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Response to Arguments/Amendment

Applicant's response has been fully considered. Remaining issues are described in the above sections.

Regarding independent claim 1, Applicant argues that the secondary reference Maier does not teach a seat for a chair having first and second support surfaces for independently supporting a person's sit bones and thighs. The primary reference Yu teaches this. Maier has not been utilized for this teaching. Nevertheless, the first (at 16) and second (at 32) support surfaces of Maier are clearly capable of independently supporting a person's sit bones and thighs. Note that the first support surface extends in one plane horizontally for supporting a person's sit bones. Also note that the second support surface extends in a second plane that is inclined downwardly from the horizontal for supporting the thighs.

Applicant argues that Maier does not teach a weight-bearing seat, but merely discloses a cushion adapted to be placed on a weight-bearing seat. Clearly Maier shows a weight-bearing seat. The cushion of Maier clearly is used for supporting the weight of a person. Clearly the device of Maier performs its function as a seat (a bottom) with or without a secondary chair (back, bottom, and at least one leg) for supporting it.

Applicant further argues compressibility and portability of the device of Maier, however these arguments lack relevance. The pertinent art is replete with compressible and/or portable seats.

Applicant further argues that the lower surface of the device of Maier is flat, which limits its use to a weight-bearing seat having a single, generally flat, upper surface. This does not appear relevant to the teaching that has been utilized in Maier. The utilized teaching is directed to the configuration of the top surface. Nevertheless, the device of Maier performs its function with or without a secondary supporting device.

Applicant argues that the primary reference Yu has an underside that is not a flat continuous surface, but is a generally flat portion and an inclined portion. This appears consistent with the instant invention. The claim language does not negate a showing of this configuration.

Applicant argues that the combination of Yu and Maier cannot be considered obvious. Applicant describes a "contrived instruction" to combine the references by substituting the cushion 10 of Maier for the cushion 210 of Yu. This however lacks relevance to the present combination. In the present combination, the teaching of a front-to-back extent of the second support surface being approximately equal to the front-to-back extend of the first support surface has been utilized. The Examiner has not substituted one cushion for the other. The modification in claim 1 is directed only to changing the length or lengths of the first and/or second support surface.

Applicant argues that the combination would not yield the claimed invention since Maier's cushion with its flat underside would seem to fit only as one of the portions 211, 212 of Yu's cushion element 210, or Maier's cushion would need to fold over the edge between the portions 211 and 212, which would eliminate the very geometric interrelationship of Maier's cushion. The flat underside of Maier has not been incorporated into Yu, and is not relevant to the combination. The redistribution of the lengths of the top surfaces of the primary reference does not affect the underside of the assembly. Fitting and folding over of the portions is not necessary.

Applicant further argues that there is no suggestion or motivation to combine the Yu and Maier. The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. The motivation to combine the references has been set forth in the recitation of the rejection.

Applicant further argues that although the secondary reference discloses a cushion with an upper surface that includes a tapered section and a relatively flat horizontal section, the reference provides no teaching of any advantages or significance of such tapering or the relative front-to-back extents of the horizontal and tapered portions. Maier provides extensive discussion of the dimensions of his device. Within the pertinent art, such dimensions are clearly provided a certain amount of surface space for the average user, thereby enhancing comfort and support. Clearly insufficient surface space or extensive surface space degrades the comfort and/or support that is provided to an average user. Also, the tapering of the front surface is used within the pertinent art to improve ergonomic support, and therefore comfort, to an average user. The pertinent art is replete with seats having a tapered surface.

Applicant further argues that Maier fails to teach or make any mention of providing a chair with a pelvic and a thigh support. The teaching of a chair with such supports is shown in the primary reference. Nevertheless, the last paragraph of column 5 explicitly discloses use of Maier's device with chairs.

Applicant further argues against the compressibility of, the thickness of, and the provided aperture of Maier. Like similar previous arguments, relevance is lacking in that only the configuration of the front-to-back extent of the top surface of Maier has been used in the rejection.

Applicant has relied extensively on a piecemeal analysis of the references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

Applicant indicates that independent claims 14 and 39 include similar limitations to those of claim 1, and the arguments presented above are applicable. As such, the rebuttal of the above arguments apply to claims 14 and 39.

Applicant provides arguments against the previous citations of indefiniteness, however these arguments are moot in view of clarifying amendments to the claims. A new citation of indefiniteness has been provided against claim 41. This is based on Applicant's amendment to this claim.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

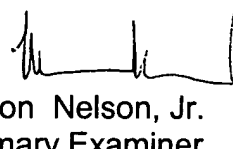
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is (571) 272-6861. The examiner can normally be reached on Monday-Wednesday, and alternate Fridays 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
July 27, 2005